Supreme Court, U.S.
FILED
SEP 15 2005

No. 05-359

IN THE

Supreme Court of the United States

HERBERT SMITH, and all similarly situated bail agents doing business as, EXPRESS BONDS INCORPORATED, INDIANA SURETY BAIL AGENTS ASSOCIATION INCORPORATED, MIDWEST BONDING INCORPORATED, *et al.*,

Petitioners,

v.

CITY OF HAMMOND, HAMMOND CITY COURT, JEFFREY A. HARKIN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DOUGLAS M. GRIMES
DOUGLAS M. GRIMES, P.C.
6941 Ironwood Avenue
Gary, Indiana 46403
(219) 939-9511

Attorney for Petitioners

196101

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Did Petitioners' Verified Amended Complaint state a claim upon which relief could be granted?

2. Did the district court commit error by not converting respondents' 12 (c) Motion for Judgment on the Pleadings to motion for summary judgment?

3. Is a Section 1983 action against a municipal subdivision, the City Judge, the City Clerk and the Police Chief to prevent prospective enforcement of a practice that prohibits private, licensed insurers and surety bail agents over whom the City Judge has no jurisdiction, from using their licenses to write surety bonds for persons incarcerated in the Hammond City jail charged with misdemeanor criminal offenses, proper?

4. Does judicial immunity absolutely insulate judges and government officials from declaratory or injunctive relief when they enforce a practice that prohibits private licensed insurers and surety bail agents, over whom the Judge has no jurisdiction, from using their licenses to write surety bonds for persons charged with misdemeanor criminal offenses?

5. Does judicial immunity absolutely insulate judges and government officials from declaratory or injunctive relief when they enforce a practice that prevents private licensed surety bail agents access to state jails to write bonds for persons charged with misdemeanor criminal offenses in a Municipal or State Court?

6. Does an insurer have a property or liberty interest in a state issued Certificate of Authority and license which entitle it to engage in the business of insurance?

7. Does a bail agent have a property or liberty interest in a state issued license which entitles him or her to perform any of the functions, duties or powers prescribed for bail agents under state law?

8. Did the district court commit reversible error by failing to convert and treat the respondents' 12 (c) Motion for Judgment on the Pleadings as a Motion for Summary Judgment, after matters outside the pleadings were presented and not excluded by the court?

9. Did the district court commit reversible by failing to give reasons and explanations as to the facts as to the facts and law leading to the ultimate conclusion to dismiss Petitioners' Verified Amended Complaint with prejudice?

10. Does the dismissal with prejudice of all claims set forth in a verified complaint by a District Court, including, but not limited to, Fourteenth Amendment, Sherman Act and state law claims, based on the suggestion, by the Court of Appeals in affirming the denial of a Motion for Preliminary Injunction, that the complaint be dismissed, constitute an abuse of discretion in a manner that is inconsistent with due process?

11. Does the appeal as of right, from the dismissal with prejudice of Petitioners' verified complaint, which was rationally related to existing law and credible factual allegations, amount to a frivolous appeal?

12. Does a Court of Appeals abuse its discretion when it sanctions Petitioners' attorney for filing an appeal of the dismissal of petitioners' verified complaint under the facts and circumstances of this case?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

1. Express Bail Bonds Incorporated is an Indiana Corporation. It has no parent corporation. It issues no stock. No publicly held company has any ownership interest in the Express Bail Bonds Incorporated.

2. Fidelity Insurance Co. has no parent corporation. It issues no stock. No publicly held company has any ownership interest in Fidelity Insurance Co..

3. Allegheny Casualty Co. has no parent corporation. It issues no stock. No publicly held company has any ownership interest in Allegheny Casualty Co.

4. American Surety Co. has no parent corporation. It issues no stock. No publicly held company has any ownership interest in American Surety Co.

5. Midwest Bonding Co. has no parent corporation. It issues no stock. No publicly held company has any ownership interest in Midwest Bonding Co.

6. Indiana Surety Bail Agents Association, Inc. has no parent corporation. It issues no stock. No publicly held company has any ownership interest in Indiana Surety Bail Agents Association, Inc.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iv
CORPORATE DISCLOSURE STATEMENT	iv
TABLE OF CONTENTS	v
TABLE OF CITED AUTHORITIES	vii
TABLE OF APPENDICES	xiii
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	5
A. Interlocutory decision affirming denial of Motion for Preliminary Injunction.	5
B. Rule 12 (c) Motion for Judgment on the Pleadings.	6
C. Motion to dismiss standard.	8

Contents

		Page
D.	Section 1983 and Judicial Immunity.	9
E.	Due Process Clause of the Fourteenth Amendment.	13
F.	Sanction of Attorney for filing frivolous appeal.	17
I.	REVIEW IS WARRANTED TO DETERMINE WHETHER IT IS PROPER FOR A COURT OF APPEALS ON INTERLOCUTORY APPEAL TO FULLY DISCUSS AND GIVE ITS OPINION ON THE MERITS OF THE UNDERLYING COMPLAINT AND NOT DECIDE THE CASE ON THE MERITS.	18
CONCLUSION		22

TABLE OF AUTHORITIES

Cases	Page
Bailey v. Patterson, 369 U.S. 31 (1962)	20
Baldwin v. Daniels, 250 F.3d 943 (5th Cir. 2001)	10
Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)	13, 14, 16
Brown v. Chote, 411 U.S. 452 (1973)	19
Brown v. New Mexico State Personnel Office, 399 F.3d 1248 (10th Cir. 2005)	17
Carter v. Stanton, 405 U.S. 669 (1972)	7, 8
Cary v. Piphus, 435 U.S. 247 (1978)	14
Church v. General Motors Corp., 74 F.3d 795 (7th Cir. 1996)	7
Conley v. Gibson, 355 U.S. 41 (1957)	7, 8
Doran v. Salem Inn, Inc., 422 U.S. 931 (1975)	19
Ex parte Virginia, 100 U.S. (10 Otto) 339 (1879)	11
Forrester v. White, 484 U.S. 219 (1988)	10, 11
GATX Leasing Corp. v. National Union Fire Ins. Co., 64 F.3d 1112 (7th Cir. 1995)	9

Cited Authorities

	Page
Goldberg v. Kelly, 397 U.S. 254 (1970)	16
H.H. Robertson Co. v. United Steel Deck, Inc., 820 F.2d 384 (Fed. Cir. 1987)	19
Hishon v. King & Spaulding, 467 U.S. 69 (1984)	7, 8
Huminski v. Corsones, 386 F.3d 116 (2nd Cir. 2004)	11
Jacobs v. City of Chicago, 215 F.3d 758 (7th Cir. 2000)	7, 8, 17
Jansen v. Aaron Process Equip. Co., 207 F.3d 1001 (7th Cir. 2000)	17
Jarrard v. CDI Telecommunications, Inc., 04-1992 (7th Cir. 2005)	6
Kapps v. Wing, 03-9117-cv (2nd Cir. 2005)	15
Kelly Kare, Ltd. v. O'Rourke, 930 F.2d 170 (2nd Cir. 1991)	15
Kennedy v. Lubar, 273 F.3d 1293 (10th Cir. 2001)	6
Kentucky Dept. of Corr. v. Thompson, 490 U.S. 454 (1989)	14, 15

Cited Authorities

Page

Kool Mann Coffee & Co. v. Coffey, 300 F.3d 340 (3rd Cir. 2002) 8, 18

Leatherman v. Tarrant County NICU, 507 U.S. 163 (1993) 8

Leclerc v. Webb, 03-30752 (5th Cir. 2005) 12

Mayor v. Lakeland Highlands Canning Co., 309 U.S. 310 (1940) 19

Members v. Paige, 140 F.3d 699 (7th Cir. 1998) ... 7

Milgard Tempering, Inc., v. Selas Corp. of America, 902 F.2d 703 (9th Cir. 1990) 8

Mitchell v. Fishbein, 377 F.3d 157 (2nd Cir. 2004) ... 12

Nechls v. Oxford Health Plans, Inc., 04-5100cv (2nd Cir. 2005) 8

Neitzke v. Williams, 490 U.S. 319 (1989) 17

Neuwirth v. Louisiana State Bd. of Dentistry, 845 F.2d 553 (5th Cir.1988) 10, 11

Oladeinde v. City of Birmingham, 230 F.3d 1275 (11th Cir. 2005) 6

Cited Authorities

	Page
Olim v. Wakinekona, 461 U.S. 238 (1983)	15
Pasquino v. Prather, 13 F.3d 1049 (7th Cir. 1994) ...	7
Pierson v. Ray, 386 U.S. 547 (1967)	9
Porous Media Corporation v. National Union Fire Ins. Co., 186 F.3d 1077 (8th Cir. 1999)	9
Pulliam v. Allen, 466 U.S. 522 (1984)	12
Rivera v. Fagundo, 04-1401 (1st Cir. 2005)	8
Rivera-Puig v. Garcia-Rosario, 983 F.2d 311 (1st Cir. 1992)	12
Shering-Plough Corporation Erisa Litigation, 04-3073 (3rd Cir. 2005)	8-9
Southco v. Kanebridge Corp., 324 F.3d 190 (3rd Cir. 2003)	6
Speigel v. Cont'l Nat'l Bank, 790 F.2d 638 (7th Cir. 1986)	17
Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980)	10
Thomas v. Guardsmark, Inc., 381 F.3d 701 (7th Cir. 2004)	9

Cited Authorities

Page

Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986) 19, 20

Trent v. Valley Elec. Assn., Inc., 195 F.3d 534 (9th Cir. 1999) 6, 8

Trulock v. Freeh, 275 F.3d 391 (4th Cir. 2001) 9

Tucker v. Outwater, 118 F.3d 930 (2nd Cir. 1997) .. 9

United States v. Gaubert, 499 U.S. 315 (1991) 8

United States v. Hatter, 532 U.S. 557 (2001) 6

United States v. Vigneau, 337 F.3d 62 (1st Cir. 2003) 6

United States Steel Corp. v. Fraternal Assn. of Steelhaulers, 431 F.2d 1046 (CA 1970) 19

Univ. of Tex., et al. v. Camenisch, 451 U.S. 390 (1981) 6, 19

Western States Ins. v. WI Wholesale Tire, 148 F.3d 756 (7th Cir. 1998) 7

Wilmer v. Board of Cty Comm'rs, 69 F.3d 406 (10th Cir. 1995) 6

Wolfe v. Strankman, 392 F.3d 358 (9th Cir. 2004) .. 11, 12